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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NOEL CARRASCO,

Defendant and Appellant.

G048458

(Super. Ct. No. 09CF0090)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed as modified.

George L. Schraer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Meagan J. Beale and William M. Wood, Deputy Attorneys General, for Plaintiff and Respondent.

Noel Carrasco appeals from his conviction for first degree murder with a special circumstance the murder was committed during the commission of a robbery and robbery. The trial court sentenced him to life in prison without parole, plus a concurrent three-year term for robbery. Carrasco contends the trial court abused its discretion by permitting the prosecutor to introduce evidence concerning a knife found on Carrasco at the time of his arrest. We find no reversible error.

Carrasco also contends the sentence for the robbery count must be stayed pursuant to Penal Code section 654, and the abstracts of judgment should be modified to reflect presentence custody credit awarded by the trial court. The Attorney General agrees with both contentions, as we do. Accordingly, we affirm the judgment as modified to stay Carrasco's conviction for robbery and award him presentence custody credit.

FACTS

Matias Vasquez was killed on December 22, 2008, and his body was found in the desert three weeks later. Juan Morales was Vasquez's friend. The two men worked together and would go out socializing. On December 22, 2008, Morales received a telephone call from Vasquez asking if Morales wanted to drink beers at a local bar named "La Barca." Morales told Vasquez he could not join him because he was busy.

Vasquez's brother, Jose Vasquez (Jose), testified he last saw Vasquez the Friday before Christmas 2008. After that day, Jose sent many text messages to Vasquez, but the responses he received used words Vasquez typically did not use. Jose sent a final text message to Vasquez asking him to verify their mother's name. Jose received no response. Jose also testified he did not know Vasquez to ever carry a knife.

Jose reported Vasquez missing to the police on December 31. Orange Police Department Detective Phillip McMullin called and sent text messages to Vasquez's cell phone number. McMullin received a text message from Vasquez's number stating Vasquez was working to make money so he could come back. McMullin

then identified himself as law enforcement and received no response. McMullin called Vasquez's number on January 5, 2009, but got no answer.

Records for Vasquez's cell phone number showed 16 calls made on December 23, 2008, to a Las Vegas, Nevada resident named Cheryl Madzelan. Orange Police Department Detective Joey Ramirez contacted Madzelan and asked if she knew who had used Vasquez's number to contact her. Madzelan said she did not know. After the police obtained further detailed records showing Vasquez's cell phone had been used to call and text Madzelan over 100 times between December 23, 2008, and January 5, 2009, Madzelan admitted it was her boyfriend, Carrasco, who contacted her from Vasquez's number.

Madzelan testified Carrasco had arrived at her house in Las Vegas on December 24, 2008. He was driving a black Honda, which belonged to Vasquez. Carrasco's mother, Leticia Carrasco (Leticia), was with him. Carrasco's mother stayed in the car while Carrasco went into Madzelan's house. Once inside, Carrasco began crying and told Madzelan he needed to see a priest because he did something really bad and had to leave California.

Carrasco and Madzelan walked to a nearby park where Carrasco told Madzelan he had killed someone in California. Carrasco also explained the blood on his fingers was from cutting himself and the blood on his pants and shoelaces came from the man he killed. Carrasco told Madzelan that he and Leticia had agreed to set up Vasquez at La Barca for a robbery under the guise Leticia was a prostitute. Leticia brought Vasquez back to the motel room where Carrasco was waiting in the bathroom. Carrasco was planning on taking Vasquez's wallet. Carrasco told Madzelan he hid in the bathroom. When he came out, he attacked Vasquez, slammed Vasquez's head against the wall, and then stabbed Vasquez until he was bleeding and unconscious. Carrasco told Madzelan he wrapped Vasquez's body in a blanket and then put his body in the trunk of Vasquez's car.

After Carrasco and Madzelan returned to her house, Madzelan's father attempted to load supplies into the trunk of the car Carrasco was driving. Carrasco told him not to open the trunk but to put the supplies in the back seat. Carrasco later told Madzelan he had disposed of Vasquez's body in the desert.

On January 12, 2009, Madzelan's father contacted the police and advised them Carrasco was on the telephone with his daughter. Carrasco was arrested at a strip mall in Las Vegas while talking to Madzelan from a pay phone. When he was arrested, Carrasco had a folding knife in his pants pocket. Two days later, Leticia was located and arrested at a Las Vegas residence. Vasquez's vehicle was located at the residence where Leticia was arrested. Vasquez's body was found by a police helicopter on January 15, 2009, east of I-15 in the Barstow area. It was wrapped in a comforter and trash bags with cords tied around the feet and neck.

An autopsy on Vasquez's body revealed five stab wounds: two to the chest, two to the abdomen, and one to the left side of the chest. In addition, there was blunt force trauma to his head with fractures to frontal bones, the nasal bone and the upper jaw bone. The cause of death was a combination of stab wounds, ligature strangulation, and blunt force trauma.

After being arrested, Carrasco was incarcerated in the Orange County Jail where he met inmate Thomas Watts. Carrasco told Watts that he and his mother had killed a man and Carrasco wanted to know how he could make it look like self-defense. Carrasco told Watts he had cut his own finger and back to make the killing look like self-defense.

Carrasco told Watts that he and his mother had come to California in search of money. Carrasco said they were going to pretend his mother was a prostitute and lure a man back to their motel to rob him. Carrasco told Watts that when he killed Vasquez, Carrasco was drunk and did not intend to kill him, only rob him. Carrasco said Vasquez

was terrified because Carrasco caught him off-guard, and Vasquez never fought back. Carrasco told Watts he stabbed Vasquez with a four or five-inch folding pocket knife.

Carrasco testified in his own defense. Carrasco stated his mother brought Vasquez back to the motel room so Carrasco could steal his money. Carrasco said he did not have a weapon on him. Carrasco emerged from his hiding place in the bathroom and found Vasquez laying on the bed. Carrasco told Vasquez, ““Give me your money.”” Carrasco said Vasquez jumped up off the bed, and the two started fighting.

Carrasco testified he and Vasquez fought for two minutes and stopped when they both became tired. Carrasco realized he could not overcome Vasquez, so he told him to leave the motel room. Carrasco claimed Vasquez then pulled out a knife, held the knife to Carrasco’s throat, and made Carrasco get on his knees and orally copulate him.

Carrasco testified his dogs emerged from the bathroom, and Vasquez turned his head. Carrasco pushed Vasquez away and, in a rage, started beating him. Carrasco picked up a chair and slammed it into Vasquez’s head. While struggling for the knife, Carrasco got cut on his neck and finger, and Vasquez bit Carrasco’s finger. Carrasco eventually got control of the knife and started stabbing Vasquez until he fell to the ground and died.

Carrasco testified he and Leticia wrapped up Vasquez’s body in a blanket, cleaned the motel room and loaded the body in Vasquez’s car. Carrasco said he threw Vasquez’s knife in a nearby dumpster. Carrasco and Leticia left the next morning and dumped Vasquez’s body in the desert on the way out to Las Vegas. Carrasco stated he purchased the knife that was in his possession at the time he was arrested a few days after arriving in Las Vegas.

Carrasco and Leticia were charged with murder (Pen. Code, § 187, subd. (a))¹ (count 1), and robbery (§§ 211, 212.5, subd. (c)) (count 2). A special circumstance of murder occurred during the commission of a robbery was alleged (§ 190.2, subd. (a)(17)(A)). On the prosecutor’s motion, the trial court severed the trials of Carrasco and Leticia. A jury convicted Carrasco of robbery in the second degree, murder in the first degree, and also found a robbery-murder special circumstance to be true.² The trial court sentenced Carrasco to prison for life without the possibility of parole for murder plus a concurrent middle term of three years for robbery. The court awarded Carrasco custody credits of 1,587 days for actual time served.

DISCUSSION

I. Evidentiary Error

Carrasco contends the trial court committed reversible error when it permitted the prosecutor to introduce evidence about the knife found on Carrasco at the time of his arrest. He argues the evidence was irrelevant because it was not the murder weapon, and the evidence was unduly prejudicial because it suggested he was a person who regularly carried a knife and who had a violent disposition, undermining his claim he killed Vasquez in self-defense. We reject his contentions.

A. Background

We begin with some additional background. The prosecution filed a motion in limine seeking admission of evidence at trial about the knife police found on Carrasco at the time of his arrest. The prosecutor’s offer of proof was, “At the time of [Carrasco’s] arrest[,] he was searched and a folding knife was found in the right front

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² Leticia was convicted of first degree felony murder and robbery, but the jury could not reach a verdict on the robbery-murder special circumstance and the allegation was dismissed on the prosecution’s motion. Leticia’s conviction is the subject of a separate appeal (*People v. Carrasco*, No. G048592).

pants pocket.” Defense counsel objected arguing, “the knife that we are discussing right now has been analyzed for prints, for blood, and for DNA. And it’s negative for all of those.” Defense counsel further argued, “There’s nothing intrinsic with the knife that would link it to the murder weapon.”

In weighing the probative value versus the prejudicial nature of the knife, the trial court asked defense counsel, “Is there anything about the stab wounds that would link this knife with the stab wounds?” Defense counsel replied there was nothing distinctive about either the knife or the wounds, and there was nothing scientifically linking the knife to the murder. In ruling the evidence was admissible, the trial court commented, “From what I hear, it could have been the knife. Nobody can say for sure either way.”

During his opening statement, the prosecutor stated Carrasco had a folding knife on him at the time of his arrest. He also commented Vasquez was excluded as being a contributor to the DNA on the knife and Carrasco could not be ruled out as a contributor. The prosecutor conceded that even though the knife was found on Carrasco when he was arrested, there was “no scientific evidence” to prove it was the murder weapon. He mentioned the width and depth of the five stab wounds and how they would relate to the knife found on Carrasco.

Defense counsel also made reference to the knife in his opening statement, arguing the depth of the stab wounds on Vasquez did not align with the dimensions of the knife. He argued testimony from the forensic pathologist, Duc Van Duong, would show the knife did not align with the wounds, but defense counsel only discussed the link between the wounds and the knife in regards to the depth of the wounds, and not to the width of the wounds.

At trial, Duong testified in detail about the depth *and width* of the five separate stab wounds. With regards to the fifth stab wound, the doctor testified the width of the wound was a quarter of an inch wide, and two and one-half inches deep. This

wound represented the narrowest width and greatest depth of all the five wounds. Neither the prosecutor nor defense counsel questioned Duong about the association between the width of the wounds and the width of the knife blade, and neither asked Duong if he had a medical opinion as to whether the knife in evidence could have been the murder weapon.

In his closing argument, the prosecutor made no mention of the knife found on Carrasco when he was arrested. Defense counsel, however, argued extensively about the knife, pointing out the knife was too wide at five-eighths of an inch to be the murder weapon because the fifth stab wound was only a quarter of an inch wide. Defense counsel argued Carrasco was unarmed when he came out of the bathroom, it was Vasquez who had the knife, which Carrasco wrestled from Vasquez and, in the heat of passion, used to stab him repeatedly. On rebuttal, the prosecutor commented he had never argued the knife in evidence was the actual murder weapon. Rather, he argued the knife is indicative of the fact Carrasco thoroughly planned out the robbery: “You’re not going to commit a robbery without a weapon, especially a sophisticated, planned one like [Carrasco and his mother] did.”

B. General Legal Principles

Only relevant evidence is admissible. (Evid. Code, § 350; *People v. Crittenden* (1994) 9 Cal.4th 83, 132.) “The trial court has broad discretion in determining the relevance of evidence [citations], but lacks discretion to admit irrelevant evidence.” (*People v. Scheid* (1997) 16 Cal.4th 1, 14.) “““The test of relevance is whether the evidence tends ‘logically, naturally, and by reasonable inference’ to establish material facts such as identity, intent, or motive. [Citations.]” [Citation.]’ [Citations.]” (*People v. Tully* (2012) 54 Cal.4th 952, 1010.)

The exclusion of relevant but prejudicial evidence is governed by Evidence Code section 352, which provides in part that the court may in its discretion exclude evidence “if its probative value is substantially outweighed by the probability that its

admission will . . . create substantial danger of undue prejudice.” “Under Evidence Code section 352, the trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.]” (*People v. Rodriguez* (1994) 8 Cal.4th 1060, 1124.) For purposes of Evidence Code section 352, “prejudice” means “evidence that uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues. [Citation.]” (*People v. Heard* (2003) 31 Cal.4th 946, 976.) We review a trial court’s ruling for an abuse of discretion. (*People v. Valdez* (2004) 32 Cal.4th 73, 108.)

“The weighing process under [Evidence Code] section 352 depends upon the trial court’s consideration of the unique facts and issues of each case, rather than upon the mechanical application of automatic rules.” (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314 (*Jennings*).) “In assessing the trial court’s evidentiary ruling, we must consider the facts known to the court at the time the ruling was made. [Citations.]” (*People v. Hendrix* (2013) 214 Cal.App.4th 216, 243 (*Hendrix*).) “To do otherwise would require us to hold the trial court to an impossible standard.” (*People v. Hernandez* (1999) 71 Cal.App.4th 417, 425.) Furthermore, a judgment may not be reversed due to the erroneous admission of evidence unless the error resulted in a miscarriage of justice. (Evid. Code, § 353, subd. (b).)

C. Analysis

Carrasco contends evidence about the knife he possessed three weeks after Vasquez’s killing was irrelevant because the knife was not the murder weapon. Case law holds it is proper to “admit into evidence weapons found in the defendant’s possession some time after the crime *that could have been the weapons employed*.” (*People v. Riser* (1956) 47 Cal.2d 566, 577 (*Riser*), italics added, overruled on other grounds in *People v. Chapman* (1959) 52 Cal.2d 95, 98, and *People v. Morse* (1964) 60 Cal.2d 631, 648-649 & fn. 2; see also *People v. Mills* (2010) 48 Cal.4th 158, 197 [“Because defendant was

accused of killing the victim by cutting her throat and shortly after the crime was found in possession of several cutting devices, any one of which could have been the murder weapon, the trial court acted within its discretion in finding the evidence to be relevant”].) And even if not the actual murder weapon, weapons evidence might be otherwise relevant to commission of the charged offenses. (*People v. Cox* (2003) 30 Cal.4th 916, 956-957, overruled in part on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421 & fn. 22.) But evidence of possession of a weapon may not be admitted simply as bad character evidence (*People v. Prince* (2007) 40 Cal.4th 1179, 1249), or as observed in *Riser, supra*, 47 Cal.2d at page 577, simply to demonstrate that the defendant “is the sort of person who carries deadly weapons.”

Here, when the trial court ruled on the prosecution’s motion in limine, whether Carrasco’s knife was in fact the murder weapon, was unknown. In argument, neither the prosecutor nor defense counsel addressed the fact the knife found on Carrasco had a blade that was too wide to inflict one of the knife wounds found on Vasquez’s body.³ This was likely due to the fact that, at the time of the motion, neither side knew this to be the case. Defense counsel argued against admitting the knife on the grounds that no fingerprints, blood, or DNA was found on the knife. The court then specifically

³ In his reply brief, Carrasco concedes the trial court could rule on the motion in limine based only on the facts before it when it ruled. However, he argues it was either misconduct on the part of the prosecutor or incompetence of his defense counsel to have failed to alert the court to Duong’s anticipated testimony concerning the width of the knife, which would have made it clear the knife was not the murder weapon. “But we do not consider an argument first raised in a reply brief, absent a showing why the argument could not have been made earlier.” (*People v. Newton* (2007) 155 Cal.App.4th 1000, 1005.) Moreover, in view of our conclusion Carrasco was not prejudiced by any erroneous admission of the knife evidence, we need not consider these points further. (See *Strickland v. Washington* (1984) 466 U.S. 668, 684, 693-694 [defendant claiming ineffective assistance of counsel must show reasonable probability of more favorable outcome but for counsel’s failing]; *People v. Williams* (2009) 170 Cal.App.4th 587, 635 (*Williams*) [no reversal due to prosecutorial misconduct unless reasonable probability of more favorable result in absence of misconduct].)

asked, “Is there anything about the stab wounds that would link this knife with the stab wounds?” Defense counsel stated there was nothing distinctive about the wounds that would link this knife to the crime. The court then asked, “So potentially it could be the murder weapon, conceivably?” Relying on the lack of DNA found on the knife, defense counsel responded it was “highly doubtful.” As noted in *Riser, supra*, 47 Cal.2d at page 577, “When the specific type of weapon used to commit a homicide is not known, it may be permissible to admit into evidence weapons found in the defendant’s possession some time after the crime that could have been the weapons employed. There need be no conclusive demonstration that the weapon in defendant’s possession was the murder weapon.”

The trial court conducted an Evidence Code section 352 analysis, concluding the evidence was not unduly prejudicial, and ultimately whether or not the knife found on Carrasco was the murder weapon was a question of fact for the jury to decide. It was only during the subsequent trial testimony of the forensic pathologist who performed the autopsy on Vasquez that evidence came to light the knife found on Carrasco was incapable of creating one of the wounds found on Vasquez. The knife could not have been one used in the murder because one specific wound incision on Vasquez was narrower than the width of the blade of the knife found on Carrasco. Stated differently, only after testimony during the trial were both parties made aware the knife in question was incapable of being the murder weapon.

We will only “disturb a trial court’s exercise of its discretion under [Evidence Code] section 352 . . . upon a finding that its decision was palpably arbitrary, capricious and patently absurd. [Citation.]” (*Jennings, supra*, 81 Cal.App.4th at p. 1314.) Here, the record before us demonstrates the trial court conducted an extensive analysis regarding the admissibility of the knife found on Carrasco at the time of his arrest under Evidence Code section 352. The trial court ruled after carefully balancing any prejudicial effect of the evidence against its probative value after both sides argued

during the motion in limine. It would be impossible for the court to have ruled on the motion using information unknown to the court at the time of the ruling. (*Hendrix, supra*, 214 Cal.App.4th at p. 243) Accordingly, we find no abuse of discretion.

We recognize that in rebuttal to the defense closing argument, in which defense counsel argued extensively the knife could not have been the murder weapon, the prosecutor asserted the knife was significant for an improper reason—namely, that Carrasco’s subsequent possession of a knife suggested he would have been similarly armed with a knife when he robbed Vasquez three weeks earlier. The prosecutor’s argument improperly invited the jury to consider the knife evidence as evidence of Carrasco’s bad character, i.e., that he was “the sort of person who carries deadly weapons.” (*Riser, supra*, 47 Cal.2d at p. 577.) But Carrasco raised no objection to the prosecutor’s argument and the jury could easily have been admonished to disregard the argument. (*People v. Samayoa* (1997) 15 Cal.4th 795, 841 [complaint of prosecutorial misconduct waived absent objection and request jury be admonished to disregard impropriety].)

Moreover, any error in admission of the knife evidence, or the prosecutor’s improper use of the evidence in his rebuttal argument, was not prejudicial. Under the *Watson* harmless error standard, a judgment may be overturned only if “it is reasonably probable that a result more favorable to the [defendant] would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836; see *People v. Alcala* (1992) 4 Cal.4th 742, 790-791 [admission or exclusion of evidence following exercise of discretion under Evidence Code section 352 is tested for prejudice under the *Watson* harmless error test]; *Williams, supra*, 170 Cal.App.4th at p. 635 [no reversal due to prosecutorial misconduct unless reasonable probability of more favorable result in absence of misconduct].)

Carrasco relies heavily on *Riser, supra*, 47 Cal.2d 566, to argue that admission of the knife found on Carrasco at the time of his arrest constituted reversible

prejudicial error. In *Riser*, the Supreme Court held it was error to admit into evidence the fact defendant owned a gun that conclusively could not have been the murder weapon, but it was not reversible error because it was not prejudicial. (*Id.* at p. 577.) The Court concluded the jury would already have known from other properly admitted evidence that defendant possessed firearms and it would have gained little from the admission of the evidence. As in *Riser*, here, even if the trial court erroneously admitted the knife found on Carrasco at the time of his arrest, the error was not prejudicial.

Although the prosecution tried the case on a deliberate and premeditated murder theory and a felony murder theory, the jury convicted Carrasco of robbery and found the robbery special circumstance to be true indicating it convicted Carrasco on the felony murder theory. Carrasco testified he had no weapon when the fight began. Carrasco claimed he had given up trying to overpower Vasquez when Vasquez pulled a knife and sexually assaulted him. He argues erroneously admitted evidence that he later possessed a knife undermined his defense.

We do not find it reasonably probable the jury would have found in Carrasco's favor on this self-defense claim had the knife evidence been excluded. Whether the jury believed Carrasco started out armed with a knife, or whether it believed he had disarmed his victim during the attack and was trying to defend himself against his victim, it is not reasonably probable the jury would have found the killing did not take place during commission of a robbery. Under the felony-murder rule, a killing in the commission of a robbery is first degree murder even if the killer acts in unreasonable or heat of passion self-defense. (*People v. Seaton* (2001) 26 Cal.4th 598, 665; see also *People v. Hawkins* (1995) 10 Cal.4th 920, 958-959, abrogated on other grounds in *People v. Lasko* (2000) 23 Cal.4th 101, 107 [defendant who kills in heat of passion during commission of felony still subject to felony-murder special circumstance].) Not only did Carrasco testify about his robbery plans, but he admitted to his girlfriend, Madzelan, and Watts, that he and his mother lured Vasquez to their motel room specifically to rob him.

Carrasco testified he hid in the bathroom and then sprang out on Vasquez to rob him. Madzellan and Watts both testified Carrasco told them the same and told them that when he attacked Vasquez to rob him, he stabbed him repeatedly with a knife while trying to subdue him. Carrasco told Madzellan and Watts that he and his mother then wrapped up Vasquez's body and cleaned the motel room. They took Vasquez's money and his car, and disposed of the knife and the body. Carrasco never suggested to Madzellan or Watts that Vasquez fought back or threatened him. Even after the prosecutor conceded during his closing argument the knife found on Carrasco when he was arrested was not the murder weapon, the jury still found Carrasco guilty of committing murder during the planned robbery of Vasquez. In short, even if the knife had not been introduced during the trial, the verdict would not have changed, and any error was not prejudicial.

II. Section 654

Carrasco argues, and the Attorney General agrees, that because his first degree murder conviction was based on the robbery-murder theory, the trial court should have stayed his sentence on count 2 (robbery), rather than imposing a concurrent term. We agree. Section 654, subdivision (a), provides in part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." When a defendant is convicted on a felony murder theory, section 654 precludes imposition of a separate term for the predicate felony. (*People v. Montes* (2014) 58 Cal.4th 809, 898; see also *People v. Meredith* (1981) 29 Cal.3d 682, 696 [conviction of, but not punishment for, both felony murder and the related robbery proper]; *People v. Boyd* (1990) 222 Cal.App.3d 541, 575-576 [robbery sentence stayed under § 654 where robbery was crime underlying first degree felony murder conviction].) Accordingly, the sentence imposed as to count 2 (robbery) must be stayed.

III. Presentence Custody Credit

Carrasco contends, and the Attorney General agrees, the abstract of judgment must be amended to reflect the 1,587 days of presentence custody credit awarded by the trial court in its oral pronouncement of judgment. (*People v. Taylor* (2004) 119 Cal.App.4th 628, 645 [under § 2900.5, defendant convicted of murder is entitled to credit for actual days spent in custody from the date of arrest to the date of sentencing].) Carrasco was arrested on January 12, 2009, and sentenced on May 17, 2013, a period of 1,587 days. Accordingly, he was entitled to an award of 1,587 days of actual custody credit—the number of days the trial court orally awarded. When there is a discrepancy between the oral pronouncement of a sentence and the minute order or the abstract of judgment, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Consequently, we order the abstract of judgment corrected to reflect the trial court’s oral pronouncement of sentence.

DISPOSITION

The judgment is modified to stay the sentence imposed on count 2 (robbery), and to provide for presentence custody credit of 1,587 days. As modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting these modifications and to forward the amended abstract of judgment to the Department of Corrections and Rehabilitation, Division of Adult Operations.

O’LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.